IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition No.3943 of l99l

The State of Maharashtra ..Petitioner
vs
Rajaram Soma Gawas and ors .respondents

Mr V A Gangal with Mr. S R Nargolkar AGP for petitioner

with

Writ Petition No. 3l96 of l99l

Rajaram Soma Gawas and ors.. Petitioners
vs
The State of Maharashtra and ors..respondents

Mr.G.R.Rege with Ms Leena Sawant for the petitioners
Mr.V.A.Gangal with Mr S.R.Nargolkar AGP for respondent nos l to 3.

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ

Dated l3.7.2005

Oral Judgment: (Per A.P.Shah J)

l. These two writ petitions arising under the Maharashtra Private Forests (Acquisition) Act, l975,hereinafter referred to as the "Private Forests Act", involve common questions of law and facts and can be conveniently disposed of by this common judgment. Writ Petition No.3943 of l99l is preferred by the State of Maharashtra seeking to quash and set aside the order of the Maharashtra Revenue Tribunal dated 30.4.l98l dismissing the appeal of the State Government and confirming the

order of the Sub-Divisional Officer(Revenue), Sawantwadi directing release of the private forest land to the original land holders. The land holders are impleaded as respondent nos l to 7 in this petition. We are now concerned with S.Nos 4/l, 6/6, 6/8, 29/9, 34/8, 42/4, 70/3, 70/6, 30/5, 3l/l, and 28/4 in village Ugade in District Sindhudurg comprising various extents of land in all roughly about l5 hectores and 64 Ares. After the Private Forests Act was brought into force, the possession of various lands of the respondents including the above lands was taken by the Divisional Forests Officer, Sawantwadi on l.l2.l975. Thereafter the Dy Collector,Private Forests vide two separate orders dated 3l.l0.l979 and l9.l2.l979 restored possession of certain portions of the land to the respondents.In respect of the remaining land, it was held that it is fallow and not cultivated by the respondents and stood acquired by the State Government in view of section 3(l) of the Private Forests Act.

2. The respondents challenged the orders of the Deputy Collector, Private Forests before the Maharashtra Revenue Tribunal in Revenue Appeal No.1 of 1987. The Tribunal vide order dated 25.3.1988

dismissed the appeal as not maintainable,but gave liberty to the respondents to prefer their claim under Section 6 of the Private Forests Act. Pursuant to the liberty granted by the Tribunal, an application came to be filed under Section 6 seeking a declaration that the said land is not forest land and for restoration of possession of the land. The Sub-Divisional Officer held that notice under section 35(3) of the Indian Forests Act, l927 was not served on all the co-owners and thus the land does not fall within the definition of "private forest" under the Private Forests Act and the entire land is therefore liable to be released from acquisition. Accordingly the Sub-Divisional Officer directed the Forest Officer to hand over the possession of the said land to the respondents. Against the decision of the Sub-Divisional Officer Appeal No.REV.FOREST. 6 of 1989 was preferred by the State Government before the Maharashtra Revenue Tribunal. The learned Presiding Officer of the Tribunal accepted the plea of the State Government that the land is private forest within the meaning of the Private Forests Act, but held that the land is cultivable land and in view of the provisions of Section 3(2) of the Private Forests Act it is not vested in the State

Government. Consequently, the Tribunal dismissed the appeal.

3. It appears that after the decision of the Tribunal, the Forest Department cut certain trees for the purpose of afforestation. The respondents claimed that they are fully entitled to the said wood which accordingly to them was unauthorizedly removed by the Forest Department. Contempt Petition No. 55 of 1987 was also filed for taking action against the forest officers. In that petition the Forest Department was permitted to put the wood in auction and deposit the entire proceedings with the nationalized bank. The respondents have filed Writ Petition 3196 of 1991 seeking a direction to encash the fixed deposit and to hand over the said amount to the respondents with interest accrued thereon.

4. Mr.Gangal, learned counsel appearing for the State Government contended that the land in question was never under cultivation and clearly falls under definition of private forest under section 2(f)(iii) of the Private Forests Act and by virtue of Section 3(l) of the said Act the said land stood vested in the State Government and

physical possession of the land was also taken on 1st December, 1975. Mr.Gangal submitted that the findings recorded by the Sub- Divisional Officer as well as the Tribunal that the said land was under cultivation is based on no evidence and is totally perverse. The learned counsel submitted that the 7 x l2 records show that the land was not under cultivation and wild shrubs were grown all over the land and there was no trace of agriculture in the past. He submitted that in any event forest land cannot be restored to the owners after the enactment of the Forest (Conservation) Act, l980. He submitted that the provisinos of section 22A of the Private Forests Act stands superceded in view of the enactment of the Forest(Conservation) Act, l980.

5. In reply, Mr.Rege appearing for the respondents contended that the land was cultivated by the owners by taking crops for alternate years and by virtue of Section 3(2) of the Private Forests Act, the land did not vest in the State Government. He submitted that Section 3(2) expressly excludes from the operation of the Act the agricultural lands held by an occupant or tenant to the extent not in excess of the ceiling

area provided by Section 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. Mr. Rege submitted that mere issuance of notice under Section 35(3) of the Indian Forests Act, l927 is not sufficient to treat the land as private forest within the meaning of Section 32(f)(iii) of the Private Forests Act. According to him the Sub-Divisional Officer has recorded a finding of fact that the land is not a forest and is an agricultural land and this finding has been confirmed by the Tribunal and therefore, the land cannot be treated as a forest land under the Private Forests Act. He submitted that even assuming that the land is private forest within the meaning of the Private Forest Act the land holders are entitled to restoration of such land subject to ceiling of l2 Hectares as prescribed by section 22A of the said Act.

6. In order to appreciate the contentions of the learned counsel appearing for the parties, it would be necessary to note the relevant provisions of the Private Forests Act. Section 2 of the Private Forests Act contains definitions of the two expressions - ’forest’ and ’private forest’ which are material for our purpose and run thus :-

""(c-i): ’forest’ means a tract of land covered with trees (whether standing, felled, found or otherwise), shrubs, bushes, or woody vegetation, whether of natural growth or planted by human agency and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream flow, protection of land from erosion, or other such matters and includes, -

(i) land covered with stumps of trees of forest;

(ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the 30th day of August 1975;

(iii) such pasture land, water-logged or cultivable or non-cultivable land, lying within or linked to a forest, as may be declared to be forest by the State

Government;

(iv) forest land held or let for purpose of agriculture or for any purposes ancillary thereto;

(v) all the forest produce therein, whether standing, felled, found or otherwise"

"2(f): 'private forest' means any forest which is not the property of Government and includes -

(i) any land declared before the appointed day to be a forest under S.34A of the Forest Act;

(ii) any forest in respect of which any notification issued under sub- sec. (1) of S. 35 of the Forest Act, is in force immediately before the appointed day;

(iii) any land in respect of which a notice has been issued under sub- sec. (3) of S. 35 of the Forest Act, but excluding an area not exceeding two hectares in extent as the

Collectors may specify in this behalf;

(iv) land in respect of which a notification has been issued under S. 38 of the Forest Act;

(v) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;

(vi) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto."

7. Section 3 of the Private Forests Act provides for vesting of all private forests in the State Government and that Section runs thus :

"3. (1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any Court,

Tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government, and all rights, title and interest of the owner or any person other than the Government subsisting in any such forest on the said day shall be deemed to have been extinguished.

(2) Nothing contained in sub-sec. (1) shall apply to so much extent of land comprised in a private forest as is held by an occupant or tenant and is lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by Section 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under sub-sec. (1) shall be

deemed to be reserved forests within the meaning of the Forest Act."

8. Reverting back to the definition of private forests given in Section 2(f), it will be seen that this definition consists of two parts; first part indicating what that expression ‘means’ according to the legislature and the second part indicating what that expression ‘includes’ according to the legislature. In the first part, ‘private forest’ is defined to mean any forest which is not the property of the Government, while in the inclusive part six items or heads mentioned in sub-clauses (i) to (vi) have been included in the definition. Clauses (i) to (iv) of section 2(f) bring within the definition of private forest four types of land in respect of which action has been taken by the State Government under sections 34A, 35(1), 35(3) and 38 of the Indian Forest Act, 1927. Sub-clause (i) brings within the definition ’private forest’ any land declared before the appointed date to be forest under section 34A of the Indian Forest Act. Sub-clause (ii) brings in land in respect of which notification under section 35(1) of the Indian Forest Act has been issued immediately before the appointed date within the category of private

forest. Sub-clause (iii) bring within the definition land in respect of which notice has been issued under section 35(3) of the Indian Forest Act but excluding area not exceeding two hectares in extent as the Collector may specicy in that behalf. Sub-clause (iv) brings within the definition of land in respect of which notification has been issued under section 38 of the Indian Forest Act. It is thus clear that sub- clauses (i), (ii) and (iv) of section 2(f) deal with declared, adjudicated or admitted instances of forests. Sub-clause (iii) of section 2(f) seeks to cover land in respect of which merely notice has been issued to the owner of the private forest under section 35(3) of the Indian Forest Act and his objection may have remained unheard till the appointed date i.e. 30th August, 1975 as section 35 stood repealed on the coming into force of the Private Forests Act. Thus sub-clause (iii) covers the land in respect of which merely a notice under section 35(3) of the Indian Forest Act has been issued but excluding the area not exceeding two hectares in extent as the Collector may specify in this behalf.

9. In Chintamani Gajanan Velkar vs State of

Maharashtra (2003) 3 SC l43,the Supreme Court while construing the provisinos of section 2(f)(iii) of the Private Forests Act held that when a notice was issued under section 35(3) of the Indian Forest Act before the apponited day i.e 30.8.l975, the Legilsature intended that such land excluding portion of two hectares would be a deemed private forest within the meaning of the Private Forests Act. Justice Jagannadha Rao speaking for the Bench observed as under :

> "17. It is true that the repealing provision - Section 24(1) of the Maharashtra Act, 1975 merely repeals Section 35 of the Indian Forest Act, 1927 and appears prima facie prospective but the question is whether there is anything in the repealing Act of 1975 which can show an intention on the part of the Maharashtra Legislature that the further procedure contemplated by Section 35(3) - namely, notice being issued under Section 35(3) being served on the owner and the notification under Section 35(1) being issued has been dispensed with.
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> 18. In our view, the proper clue in this

behalf is provided by sub-clause (iii) of Section 2(f) itself. It will be noticed that in cases where a final notification has been issued under Section 35(1) the entire notified land would automatically vest in the State on the appointed date, namely, 30-8-1975. But in the case where only notice has been issued as per Section 35(3) before the appointed day, namely, 30.8.1975 the Maharashtra Legislature thought that the entire property covered by the notice in the State need not vest but it excluded 2 hectares out of the forest land held by the landholder. That was the consideration for not allowing the benefit of an inquiry under Section 35(3) and for not allowing the notification to be issued under Section 35(1) of the 1927 Act.

19. In our view, the legislature has not made any discrimination in regard to the matters where notification had been issued under Section 35(1) of the Forest Act, 1927 on the one hand and in cases where notification had not been issued and the matter stood still at the stage of notice

> under Section 35(3) on the other. In the latter cases, the legislature thought it fit to exclude 2 hectares of the landholder from vesting. If that was done, a notice that was issued under Section 35(3) would itself be sufficient and if such notice was issued before the appointed day i.e. 30.8.1975 the land would vest in the State subject, of course that the Collector has to specify the particular extent of 2 hectares which can be retained by the landholder. There is no need for any service of such notice before 30.8.1975, nor for an inquiry nor for a notification under Section 35(1)."
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> (emphasis supplied)

10. In the light of the observations of the Supreme Court, the position that emerges is as follows. Where a notification has been issued under Section 35(1), the entire notified land would vest in the State Govt. on the appointed day but where only notice has been issued under Section 35(3) before the appointed day the entire land covered by the notice would not vest in the State and an area of two hectares will be excluded out of the land covered by the notice. In other words

such land would vest in the State Government excluding the area of two hectares as may be specified by the Collector.

11. In the instant case there is no dispute that notice under Section 35(3) of the Indian Forest Act came to be issued in respect of the land in question on 15th December, 1965. Therefore, by virtue of Section 2(f)(iii) the land must be treated as 'private forest' excluding the area of 2 Hectares within the meaning of the Private Forests Act. The land is situated on the slope of a hill and the record of the 7-12 extract for the relevant years shows that the land was covered by wild shrubs and trees and was not fit for cultivation. In the 7-12 extract the land is described as 'kavalpad' i.e. the bushes grown for rab manure by cutting its branches for cultivation of Nagli crop. The respondents in their statement submitted to the Deputy Collector, Forests also categorically stated that the land is situated on the hill, that by felling the trees and burning them, Nagli crops are taken but the land was never ploughed and therefore, the land was not eroded. There is not an iota of evidence on record to show that the land was under cultivation at any time. Therefore, the

provisions of Section 3(2) of the Private Forest Act are not attracted to the present case. The finding of the Sub-Divisional Officer that the land was cultivable land is not based on any evidence and is completely perverse. The Tribunal has also failed to apply its mind to the material produced on record and has mechanically confirmed the finding of the Sub-Divisonal Officer. We have therefore no hesitation to hold that in view of the provisions of Section 2(f)(iii) read with section 3(l) of the Private Forest Act the entire land excluding two Hectares stood vested in the State Government on the appointed date.

12. At this stage, we may consider the effect of the enactment of the Forest (Conservation) Act (69 of 1980). Section 2 of the Forest (Conservation) Act, 1980 imposes restrictions on the dereservation of forests and use of forest land for non forest purposes and reads as under :

> 2 "Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any

order directing -

(i) that any reserved forest within the meaning of the expression "reserved forest" in any law for the time being in force in that State or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

[(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Governmen.

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation".

13. In T.N.Godavaraman Thirumulkpad v. Union of

India, (Writ Petition (Civil) 202 of 1995) the Supreme Court held that the Forest (Conservation) Act has been enacted with a view to check further deforestation which ultimately results in ecological imbalance; and, therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description would cover all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term 'forest land' occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. Therefore, the provisions enacted in the Forest (Conservation) Act for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. The Court after considering its earlier judgments in Ambica Quarry Works v. State of Gujarat (1997 (1) SCC 213),

Rural Litigation and Entitlement Kendra v. State of U.P. (1989 Suppl. (1) SCC 504) and the order dated 29th November, 1996 in Writ Petition (L) No.749 of 1995 (Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority) directed that no forest land shall be dereserved without prior approval of the Central Government.

l4. In the light of the provisions of the Forest (Conservation) Act, 1980, the provisions contained in Section 22-A of the Private Forests Act stand superseded and it is not open for the authorities to restore the private forest which has been vested in the State Government and has been treated as reserved forest by virtue of Section 3 of the Private Forests Act. However, it appears that inspite of the passing of the Forest Conservation Act large tracts of forest lands particularly in Alibaug, Khandala and Lonawala etc. are being diverted for non forestry purposes particularly for construction of bungalows, farm-houses buildings, industries etc. and the Collectors are issuing certificates/ clarifications saying that the lands are not forest lands on the appointed date. It is seen from the letter dated 19th March, 1997 written by the Chief Conservator of Forests (Central) to

the Chief Secretary to the Government of Maharashtra, an area of 3.03 lakh hectares of private forests was acquired under the provisions of Section 3 of the Private Forests Act. The acquired private forests deemed to be reserved forests under the provisions of the Maharashtra Private Forest Acquisition (Amendment) Act, according to which the acquired forest lands were to be restored to certain category of farmers and consequently, forest land to the extent of 73.894 hectares was restored to farmers. This was done prior to the promulgation of Forest (Conservation) Act 1980. The letter further points out that the restored forest lands are being diverted for non forestry purposes, particularly for construction of buildings, industrial sheds etc., in Alibaug, Khandala and Lonawala areas. Later on 28th June, 2000, the Chief Conservator of Forests (Central) again wrote to the Chief Secretary to the Government of Maharashtra that in cases which had been initiated for taking action for violation of Forest (Conservation) Act, 1980, the Government was likely to lose many of such areas primarily on account of non-furnishing of copies of original notices issued under Sub-section 3 of Section 35 of the Indian Forest Act, 1927 and the Collectors are

giving the certificates/ clarifications under Section 6 of the Private Forests Act, 1975, saying that the land in question was not private forest on the appointed date i.e. 29th August, 1975. Such certificates/ clarifications are being issued even after the lapse of more than 20 years, and this was against the spirit of the Private Forests Act, 1975.

15. The Division Bench presided over by the learned Chief Justice Mr.B.P.Singh (as His Lordship then was) after noticing the aforesaid letters of the Chief Conservator of Forests (Central) has passed following directions in Writ Petition No.2980 of 2001 (PIL 17/02):

> "4. It also appears that enquiries under Sections 6 and 22(A) of the Maharashtra Private Forest (Acquisition) Act, 1975 are still pending, and at the same time, lot of litigation is pending before other Courts where the very status of the land as forest land is challenged. Moreover, it is pointed out that in view of the provisions of Section 2 of the Forest (Conservation) Act, 1980 as well as Section 27 of the Indian

Forest Act, a forest cannot be de-reserved without the prior approval of the Central Government. In that extent, Maharashtra Private Forest (Acquisition) Act, 1975 stands superseded.

5. In view of the above circumstances, we direct the State of Maharashtra to file a comprehensive affidavit giving the following information :

(i) The extent to which instructions set out in the affidavit in reply have been carried out;

(ii) What steps have been taken to complete the enquiries under Section 6 and Section 22 (A) of the Maharashtra Private Forest (Acquisition) Act, 1975? how many such enquiries are presently Pending before the authorities and to what extent, forest land is involved in such enquiries?

(iii) A status report regarding cases where 12 hectares of forest land have been handed back from the reserved forest category

> without complying with the procedure under Section 27 of the Indian Forest Act, showing (a) whether land records have been updated; and (b) whether possession of 12 hectares (if taken initially) has been handed back."
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> (empahsis supplied)

l6. In view of the foregonig discussion we are of the view that the respondents are not entitled to restoration of the lands nor they are entitled to receive price of the wood. The impugned orders of the Sub-Divisional Officer and the Maharashtra Revenue Tribunal are hereby quashed and set aside. It is declared that the said land excluding the area of 2 hectares is vested in the State Government and the Sub-Divisional Officer is directed to specify and demarcate 2 hectares of land which can be retained by the respondents. The price of the wood deposited in the nationalised bank as per the order of this court be released to the State Government alongwith interest accrued thereon.

. On the request of Mr. Rege, the direction for release of the amount of the price of the wood is stayed for a period of eight weeks.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No 3943 of l99l & anr

Date of Judgment: l3.7.2005

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.D.Y.CHANDRACHUD J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?